



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

MAR 2 2 2004

VIA FEDERAL EXPRESS

Mr. Lloyd E. Lindsey
10 Edgehill Drive
Camden, AR 71701-3155

RE: MUR 5428
Lloyd E. Lindsey

Dear Mr. Lindsey:

On March 9, 2004, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. §§ 434, 441a and 441b, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. As set forth in the Factual and Legal Analysis and attachments thereto, the amount of the possible violations exceeds \$4 million.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Please be advised that if conciliation efforts fail, 2 U.S.C. § 437g(a)(6), as amended, permits the Commission to file a civil action for relief including an order for a civil penalty not to exceed the greater of \$5,500 or an amount equal to the contributions or expenditures involved.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). The Office of the General Counsel will consider whether additional investigation must be completed before entering into pre-probable cause conciliation negotiations. Further, the Commission will not entertain requests for pre-probable cause conciliation, or continue any pre-probable cause conciliation negotiations, after a brief on probable cause has been mailed.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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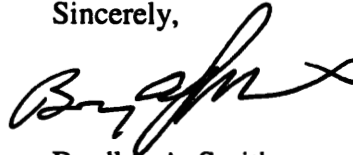
demonstrated. The Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis w/ attachments
Procedures
Designation of Counsel Form

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Lloyd E. Lindsey

MUR: 5428

I. INTRODUCTION

This matter was generated from an audit of the Republican Party of Arkansas undertaken in accordance with 2 U.S.C. § 438(b). The audit covered the period of January 1, 1999 through December 31, 2000. Accordingly, the activity at issue in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission regulations in effect in 1999 and 2000, which precedes amendments to the Act and regulations made by, or as a result of, the Bipartisan Campaign Reform Act of 2002 ("BCRA").

A copy of the audit findings and recommendations is attached ("the Audit Report").

Attachment A.

II. FACTUAL AND LEGAL ANALYSIS

Lloyd E. Lindsey ("Respondent") was the treasurer of the Republican Party of Arkansas ("the RPA") from approximately August 3, 1999 through December 18, 2002.

The Act requires every political committee to have a treasurer. 2 U.S.C. § 432(a). No contributions or expenditures shall be accepted or made on behalf of a political committee during any period in which the office of treasurer is vacant. *Id.* No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent. *Id.*

The Act prohibits corporations and labor organizations from making any contribution or expenditure, directly or indirectly, in connection with any Federal election. 2 U.S.C. § 441b(a).

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Candidates, political committees, and other persons are prohibited from knowingly accepting or receiving contributions prohibited by the Act. *Id.*

The Act also places limitations on contributions and certain types of expenditures. *See generally* 2 U.S.C. § 441a. Two of the Act's contribution limits prohibit persons and multicandidate committees from making contributions to an authorized committee in any calendar year which, in the aggregate, exceed \$5,000. 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(2)(C). Political committees are prohibited from knowingly accepting any contributions or making any expenditure in excess of the Act's limitations. 2 U.S.C. § 441a(f). In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limit contained in 2 U.S.C. § 441a. *Id.*

A treasurer is responsible for examining all contributions received for evidence of illegality and for ascertaining when contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limits of the Act and 11 C.F.R. § 110 of the Commission regulations. 11 C.F.R. § 103.3(b). If a contribution presents a genuine issue as to whether it was made from a prohibited source, exceeds the contribution limits on its face or when aggregated with other contributions from the same individual, or if a treasurer later discovers that a contribution is illegal based on new evidence not available at time of receipt or deposit, a treasurer must follow the procedures set forth at 11 C.F.R. § 103.3(b). *Id.*

The Act also imposes reporting obligations on committee treasurers. Each political committee treasurer must file reports of receipts and disbursements and sign each report.

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2 U.S.C. § 434(a). Each report must contain the information set forth in 2 U.S.C. § 434(b) and 11 C.F.R. part 104.

Each political committee treasurer shall be personally responsible for the timely and complete filing of each report or statement required to be filed under the Act and Commission regulations and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

A. Reporting Violations

Based on the facts contained in the Audit Report and the law cited above and in the Audit Report, there is reason to believe Lloyd E. Lindsey violated 2 U.S.C. § 434 as follows:

- 1) by misstating the RPA's 1999 and 2000 financial activity (*see* Attachment A at 1-4);
- 2) by failing to itemize contributions from individuals, contributions and other receipts from political committees and transfers from affiliated committees (*see* Attachment A at 8 and Attachment C); 3) by failing to correctly report transfers from affiliated committees (*see* Attachment A at 10-11 and Attachment D); 4) by failing to report disbursements made for operating expenditures in excess of \$200 within the calendar year (*see* Attachment A at 11-12); and 5) by failing to itemize outstanding debts and obligations in its 2000 Year End Report (*see* Attachment A at 20 and Attachment E).

B. Acceptance of Excessive and Prohibited Contributions

Based on the facts contained in the Audit Report and the law cited above and in the Audit Report, there is reason to believe that Lloyd E. Lindsey: 1) violated 2 U.S.C. § 441a for accepting excessive contributions (*see* Attachment A at 4-6 and Attachment B); and 2) violated 441b for accepting prohibited contributions (*see* Attachment A at 9-10 and Attachment B).

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C. Underpayment of the Federal Share of Allocable Expenses, Use of Impermissible Funds to Pay for Federal or the Federal Share of Allocable Expenses and Failure to Report or to Properly Report Federal and Allocable Expenses

Under Arkansas state law, individuals, corporations and labor unions may contribute to political parties in unlimited amounts. *See* Ark. Code Ann. §§ 7-6-203(b)(1) and (2), 7-6-201(12) and 7-6-201(5)(Michie 2003). *See also* Edward D. Feigenbaum, James A. Palmer, *Campaign Finance Law 2002, A Summary of State Campaign Finance Laws*, Chart 2A. According to the audit and public records, the Republican Party of Arkansas deposited corporate contributions and contributions in excess of \$5,000 into its non-federal accounts during the period covered by the audit.

Accordingly, based on the facts and law above and in the Audit Report, there is reason to believe Lloyd Lindsey violated 2 U.S.C. §§ 441b and 441a by knowingly accepting or receiving prohibited and excessive contributions contained in the RPA's non-federal accounts and using such funds to make disbursements for the federal expenses or the federal share of allocable expenses. *See* Attachment A at 13-17 and 22. There is also reason to believe that Lloyd E. Lindsey violated 2 U.S.C. § 434 by failing to report or correctly report federal and allocable expenses. *Id.*

D. Making Excessive Disbursements on Behalf of a Federal Candidate

Based on the facts contained in the Audit Report (Attachment A at 17-19), on the law cited above and in the Audit Report, and on the nature of the underlying disbursements for media and consulting, the Commission made the following reason to believe findings, in the alternative:

If the disbursements were made for joint federal and non-federal activity, the Commission found reason to believe that Lloyd E. Lindsey violated 2 U.S.C. § 434 for incorrectly reporting allocable disbursements and 2 U.S.C. §§ 441b and 441a by knowingly

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accepting or receiving prohibited and excessive contributions contained in the RPA's non-federal accounts and using such funds to make disbursements for the federal share of allocable expenses.

If the disbursements were made for activities that constituted coordinated expenditures, the Commission found reason to believe that Lloyd E. Lindsey violated 2 U.S.C. § 441a by making excessive in-kind contributions on behalf of a federal candidate, 2 U.S.C. § 434(b) by failing to report the contributions, and 2 U.S.C. §§ 441b and 441a by knowingly accepting or receiving prohibited and excessive contributions contained in the RPA's non-federal accounts and using such funds to make coordinated expenditures.

If the disbursements were made for activities that constituted independent expenditures, the Commission found reason to believe that Lloyd E. Lindsey violated 2 U.S.C. § 434 by failing to report an independent expenditure made on behalf of a federal candidate, and 2 U.S.C. §§ 441(b) and 441a by knowingly accepting or receiving prohibited and excessive contributions contained in the RPA's non-federal accounts and using such funds to make independent expenditures.

Attachments

- A. Findings and Recommendations from the Final Audit Report
- B. List of Possible Excessive and Prohibited Contributions
- C. List of Unitemized Contributions from Political Committees and Transfers
- D. List of Incorrectly Reported Transfers from Affiliated Committees
- E. List of Unreported Debts and Obligations

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ATTACHMENT B: POSSIBLE EXCESSIVE AND CORPORATE CONTRIBUTIONS
 (Page 1 of 2)

Possible Excessive Contributions

Contributor	Amount	Documentation	Comments
Chesley Pruet	\$5,000	9/13/99 deposit ticket listing "Pruet" as contributor and deposited 9/14/99.	Reported as contribution from Mrs. Pruett, but no check copy or other writing produced to establish this. Excessive when combined with 5/5/99 contribution from Chesley Pruett which was drawn on a personal, rather than a joint, account
Winthrop Rockefeller	\$5,000	11/5/99 check drawn on account of Winthrop Paul Rockefeller, signed by him with 11/30/99 deposit ticket	No evidence of refund or reattribution Excessive when combined with 5/18/99 \$5,000 contribution
Lloyd Stone	\$5,000	\$ 7,500 check dated 7/16/99 drawn on account of Lloyd Stone, signed by him and deposited on 7/19/99	Although \$5,000 of \$7,500 attributed to Mary Ann Stone on check memo line, no writing signed by her nor was check drawn on joint account. \$5,000 of \$7,500 is excessive when combined with prior \$2,500 contribution by Stone as evidenced by 5/10/99 deposit ticket
	\$6,500	8/3/99 deposit ticket listing "Stone" as contributor and deposited 8/5/99	Excessive when combined with 5/10/99 and 7/16/99 contributions described above

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ATTACHMENT B: POSSIBLE EXCESSIVE AND CORPORATE CONTRIBUTIONS
 (Page 2 of 2)

Possible Excessive Contributions (cont'd.)

Contributor	Amount	Documentation	Comments
Gary or Robin George	\$1,000	9/22/00 deposit ticket listing "George" as contributor	Excessive to either Gary or Robin when combined with either 9/21/00 \$5,000 contribution reported from Robin George; or 9/21/00 \$5,000 contribution reported from Gary George
Phyllis Kincannon	\$1,000	10/12/00 deposit ticket listing "Kincannon" as contributor	Reported as 10/2 contribution from Jay Kincannon but no check copy or other writing to establish this; other contributions from Kincannon were drawn on a joint account but signed by Phyllis Excessive when combined with \$5,000 contribution check dated 3/10/00 drawn on joint account and signed by Phyllis
Jim or John David Lindsey	\$5,000	10/2/00 deposit ticket listing "Lindsey" as contributor;	Excessive to either Jim or John David when combined with either \$5,000 9/21 reported contribution from Jim or \$5,000 9/21 reported contribution from John David

Possible Corporate Contributions

Contributor	Amount	Documentation	Comments
Potlatch Corporation	\$5,000	3/22/00 check drawn on Potlatch Corp. account	No reporting of contribution by Potlatch's separate segregated fund, Potlatch Employees' Political Fund
National Republican Congressional Committee	\$6,500	11/15/99 deposit ticket of RPA federal account;	NRCC disclosure report shows a \$6,500 non-federal transfer on 11/12/99

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ATTACHMENT C (Page 1 of 2)

UNITEMIZED CONTRIBUTIONS OR OTHER RECEIPTS
GREATER THAN \$200 FROM POLITICAL COMMITTEES

Contributor	Date	Amount
American Electric Power Committee for Responsible Government	9/21/00	\$ 2,000
Americans for a Republican Majority (ARMPAC)	10/4/00	\$ 5,000
Asa Hutchinson for Congress Committee	2/18/00	\$ 50
Hutchinson for Senate	7/17/00	\$ 5,000
Keyes for President 2000	4/1/00	\$10,000
OutBack Steakhouse Inc. Political Action Committee	6/15/00	\$ 5,000
Remington Arms Political Action Committee (REMPAC)	9/27/00	\$ 2,000
Southwestern Energy Company PAC	7/12/00	\$ 1,000
Subtotal -- Contributions and Other Receipts		\$30,050
Asa Hutchinson for Congress Committee (Authorized Committee Transfer)	8/21/00	<u>\$50,000</u>
Subtotal - Transfers from Authorized Cmttee		<u>\$50,000</u>
TOTAL		\$80,050

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ATTACHMENT C (Page 2 of 2)

**INCORRECTLY DISCLOSED TRANSFERS
FROM AFFILIATED COMMITTEES**

Committee	Date	Amount
Republican National Committee	6/16/00	\$ 8,087
	6/14/00	5,819
	6/9/00	12,420
	7/14/00	43,624
	8/8/00	17,099
	8/23/00	50,940
	10/3/00	314
	10/4/00	6,250
	10/27/00	12,500
	10/30/00	9,085
	11/1/00	17,000
	11/1/00	1,037
	11/3/00	21,250
National Republican Congressional Committee -- Expenditures	11/9/00	18,250
	8/14/00	32,144
	9/28/00	<u>13,902</u>
TOTAL		\$269,721

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Republican Party of Arkansas
Factual & Legal Analysis
Attachment D

ATTACHMENT D: INCORRECTLY REPORTED TRANSFER FROM AFFILIATES

Affiliated Committee	Transfer Date	Amount	No YTD Disclosed	Disclosed On Wrong Schedule	Disclosed Wrong Amount
Republican National Committee	10/6/00	\$17,243.00	X		
"	10/12/00	\$17,577.00	X		
"	10/12/00	\$11,750.00	X		
"	10/20/00	\$18,245.00	X	X	
"	10/24/00	\$5,073.00	X	X	
"					
"	10/27/00	\$25,587.00	X	X	
"	10/30/00	\$5,562.00	X	X	
"	10/31/00	\$3,782.00	X	X	
"	11/1/00	\$8,900.00	X	X	
"	11/2/00	\$17,355.00	X	X	
"					
"	11/3/00	\$12,500.00	X	X	
"	11/7/00	\$18,500.00	X	X	
"					
National Republican Congressional Cmte	11/12/99	\$6,500.00		X	
"	9/14/00	\$20,000.00	X		
"	10/5/00	\$33,540.00	X		X
"	10/12/00	\$34,632.00	X		
"	10/19/00	\$39,843.00	X	X	
"					
"	10/26/00	\$42,551.00	X	X	
TOTAL		\$339,140.00	17	12	1

ATTACHMENT E: UNREPORTED DEBT & OBLIGATIONS

Vendor	Invoice Date	Amount	Date Paid
Scott Howell & Company	12/11/00	\$5,000.00	
Hot Springs Convention Center	10/31/00	\$14,108.31	3/21/01
Hot Springs Convention Center	11/1/00	\$188.97	3/28/01
University Printing	11/2/00	\$2,200.00	1/15/01
National Collection Consultants/Southwestern Bell	2/27/01	\$374.05	3/21/01
Outdoor Adventure Tours	10/30/00	\$350.00	3/21/01
Sebastian County Republican Committee	11/3/00	\$1,013.67	3/21/01
EZ Spanish Media	11/7/00	\$775.00	3/21/01
White County Republican Committee		\$1,322.09	3/22/01
TOTAL		\$25,332.09	

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